

*Sequeira*

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION*

***SECOND APPEAL NO. 897 OF 2015  
Along with  
CIVIL APPLICATION NO.1967 OF 2015  
(For Appointment of Court Commissioner)***

Shri Vilas Ranoji Mestri. .. Appellant / Applicant  
Vs.  
Shri Ashok Baburao Chipare & ors. .. Respondents

Mr.Sandeep Koregave, for the Appellant / Applicant.  
None for Respondents.

***CORAM : N.M.Jamdar, J.  
Tuesday, 19 July 2016.***

***P.C. :***

The Appellant challenges the concurrent Judgments and Orders passed by the Civil Judge Junior Division, Kolhapur and District Judge, Kolhapur dismissing the Suit and Appeal filed by the Appellant seeking removal of alleged encroachment by the Respondents.

2. The learned counsel for the Appellant submitted that the Court Commissioner who was appointed has given a confusing map and it is a fit case that Court Commissioner be appointed. The Civil

Application No.1967 of 2015 is also taken out by the Appellant. This request cannot be accepted. The Court Commissioner was appointed at the instance of the Appellant by the trial Court. The Appellant took no steps to examine the Court Commissioner wherein doubts if any, could have been clarified. The Appellant did not file any application for appointment of another Commissioner, if the first report was not satisfactory. No such application was made even in the First appeal and therefore, request made first time at this stage, cannot be considered.

3. Both the Courts have considered the report of the Commissioner and the Sale deed in which the words translated 'along with the lane' have been scored out. The learned counsel for the Appellant submitted that sale deed has become a public document after it was registered, therefore the erasures will lose its significance. This submission also cannot be accepted. There are no initials over the striking of the significant words in the deed. If the Appellant is seeking to rely on the absence of these words, it was open to him to demonstrate as to under what circumstances, the most pertinent words were struck off without there being any counter sign by the parties.

4. The conclusion reached by both the Courts that the Respondents have not carried out any encroachment, which is

essentially a finding of fact, cannot be disturbed in the limited jurisdiction under Section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises. Second Appeal is dismissed.

5. In view of the above, the Civil Application also stands disposed of.

*(N.M.Jamdar, J.)*